IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 25763 of 2001

Between:

The State of Andhra Pradesh
Represented by the Revenue Divisional Officer, Hyderabad

..... PETITIONER

AND

1 Syed Ahmed Nooruddin (Represented by GPA Zaffer Moinuddin),
R/o.H.No.16-2-138/A, Akbarbagh, Malakpet
Hyderabad
2 Muzaffer Moinuddin, S/o.Zaffer Moinuddin,
H.No.2-3-512/A/98, Channa Reddy Nagar,
Amberpet, Hyderabad.
3 Yamuna Nagar Coop. Housing Society, Represented by its

President M.Lakshmi Narsaiah, S/o.Ramaiah, age 50 yrs,

C/o.Yamuna Diginal Electronics Private Limited,
8-2-629, Road No.1, Banjara Hills, Hyderabad.
4 Yamumna Nagar Plot Owners Association, Represented by

G.V.Mohan Reddy, S/o.Narasimha Reddy, 45 yrs,

R/o.Yamuna Digital Electronics Private Limited,
8-2-629/A, Road No.1, Banjara Hills, Hyderabad.
5 Smt.Tara Bai, W/o.Late Nataraj Jain,

Rep. by GPA Sri.Chamanlal Jain, 31 Yrs, Permanent resident of

H.No.11/91, Nagappa Street, 3rd Cross Main, Seshadripuram,

Bangalore and Present address:96, SBI Colony, Bakaram,

Gandhi Nagar, Hyd.

6 Sajjan Raj Jain, S/o.Sri.Jatan Raj Jain,
Rep. by GPA Sri.Chamanlal Jain, 31 Yrs, Permanent resident of

R/o.H.No.11/91, Nagappa Street, 3rd Cross Main,

Seshadripuram, Bangalore and Present address:96, SBI Colony,

Bakaram Gandhi Nagar, Hyd.

7 Prakash Raj Jain, S/o.late Jakhan Raj Jain,
Rep. by GPA Sri.Chamanlal Jain, 31 Yrs, Permanent resident of

R/o.H.No.11/91, Nagappa Street, 3rd Cross Main,

Seshadripuram, Bangalore and Present address:96, SBI Colony,

Bakaram, Gandhi Nagar, Hyd.

8 Smt.Sunitha, D/o.late Sri.Jathan Raj,
Rep. by GPA Sri.Chamanlal Jain, 31 Yrs, Permanent resident of

R/o.H.No.11/91, Nagappa Street, 3rd Cross Main,

Seshadripuram, Bangalore and Present address:96, SBI Colony,

Bakaram, Gandhi Nagar, Hyd.

9 Smt.Chandra, D/o.late Jathan Raj,
Rep. by GPA Sri.Chamanlal Jain, 31 Yrs, Permanent resident of

R/o.H.No.11/91, Nagappa Street, 3rd Cross Main,

Seshadripuram, Bangalore and Present address:96, SBI Colony,

Bakaram Gandhi Nagar, Hyd.

10 V.Sunil Reddy, S/o.V.Gopal Reddy,
H.No.3-5-190/3, Himayathnagar, Hyderabad.

11 V.Vinoda, W/o.V.Chandra Reddy,
H.NO.8-2-628, Road No.13, Banjara Hills, Hyderabad.

12 Smt.G.Suchitra Reddy, W/o.Govinda Reddy,
H.NO.8-2-628, Road No.13, Banjara Hills, Hyderabad.

13 E.Prakash Reddy , H.NO.8-2-628, Road No.13 Banjara Hills,

Hyderabad.

14 E.Pratap Reddy, H.NO.8-2-628, Road No.13 Banjara Hills,

Hyderabad.

15 Smt.Usha Venkat Rami Reddy, H.NO.8-2-628, Road No.13

Banjara Hills, Hyderabad.

16 S.V.Subba Reddy, C/o.Venkateswara Coop.Housing Society, Road No.12, Banjara Hills, Hyderabad.

17 Vedavyas , C/o Venkateswara Co.op Housing Society, Road No.12,

Banjara Hills, Hyderabad.
18 B.Narsing Rao, Plot No.34/A, Venkateswara Coop. Housing

Society, Road No.12, Banjara Hills, Hyderabad.
19 Smt.N.Padmaja, Plot No.317, Venkateswara Coop. Housing

Society, Road No.12, Banjara Hills, Hyderabad.
20 T.Srinivas Reddy, S/o.Anjaiah,
Plot No.316, Venkateswara Coop. Housing Society, Road No.12,

Banjara Hills, Hyderabad.
21 B.Rama Rao, Plot No.314/A, Venkateswara Coop. Housing

Society, Road No.12, Banjara Hills, Hyderabad.
22 Madan Mohan, Plot No.313, Venkateswara Coop. Housing

Society, Road No.12, Banjara Hills, Hyderabad.
23 K.E.Krishna Murthy, Plot No.312, Venkateswara Coop. Housing

Society, Road No.12, Banjara Hills, Hyderabad.
24 M.Ranga Reddy, Plot No.311, Venkateswara Coop. Housing

Society, Road No.12, Banjara Hills, Hyderabad.
25 Ch.Bhoopal Goud, S/o.Ayoding,
R/o.Flat No.350, Eden Enclave, Domalguda, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue any appropriate writ, order or direction more particularly one in the nature of a writ of Certiorari to call for the records leading up to and inclusive of the order Dt.28/02/2001 in LGC.No.187 of 1997 and quash the same as illegal, prima facie erroneous and contrary to the explicit jurisdiction vested with the Special Court under A.P.Land Grabbing (Prohibition) Act.

For the Petitioner: THE ADVOCATE GENERAL.

For Respondent No. 3: Mr. E. Ayyapu Reddy, Advocate.

For Respondent Nos. 4, 10, 12, 13, 14 and 15: Smt. K. Sreedevi, Advocate.

For Respondent No. 16: Mr. K. Goverdhan Reddy, Advocate.

For Respondent Nos. 5, 6 7 and 9: Mr. P. Venugopal, Advocate.

For Respondent No. 24: Mr. B. Mahender Reddy, Advocate.

For Respondent No. 25: Mr. Gopal Govind Naik, Advocate.

For Respondent Nos. 21 and 23: Mr. T. Subrahmanyam, Advocate.

The Court made the following :

THE HONOURABLE SRI JUSTICE B. SUDERSHAN REDDY

AND

THE HONOURABLE SRI JUSTICE K.C. BHANU

W.P. No.25763 of 2001

ORDER: (Per Hon'ble Sri Justice B. Sudershan Reddy)

The State of Andhra Pradesh, represented by the Revenue Divisional Officer, Hyderabad, invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and accordingly prays to issue a Writ of *Certiorari* to call for the records leading up to and inclusive of the order, dated 28-02-2001, made in
L.G.C. No.187 of 1997, on the file of the Special Court under the A.P. Land Grabbing (Prohibition) Act at Hyderabad and quash the same.

In order to consider as to whether the impugned order passed by the Special Court suffers from any error apparent on the face of the record requiring our interference in exercise of our *Certiorari* jurisdiction, the relevant facts leading to filing of this writ petition may have to be noticed.

The petitioner herein filed L.G.C. No.187 of 1997 under Section 8(1) of the A.P. Land Grabbing (Prohibition) Act No.12 of 1982 (for short 'the Act') in the Special Court seeking a declaration of title to the application schedule land admeasuring Acs.28-27 guntas situated in T.S. No.29,
Block 'H', Ward No.9 and T.S. Nos.1, 2 & 3, Block 'J',
Ward No.12, and for a further declaration declaring the respondents to be "land grabbers".

The case set up by the writ petitioner in the L.G.C., as is evident from the concise statement is that the land in

Survey No.102 of Hakimpet village is a Government Poramboke Kancha Land. As per the town survey records, the total extent of the land in Survey No.102 is Acs.323-23 guntas; the land is correlated to T.S. No.28 - part, Block – 'H' in Ward No.9 and T.S. No.29 - part, Block 'J', Ward No.12. The then Tahsildar had irregularly assigned an extent of Acs.25-00 of land without following the rules made in

Circular No.14 of 1954, in favour of one Syed Ahmed Nooruddin - 1st respondent. The said Syed Ahmed Nooruddin sold away the land assigned to him in favour of the members of the 3rd respondent – Yamuna Nagar Co-operative Housing Society (for short 'the Society') on 07-12-1979. On coming to know that the assignment granted by the then Tahsildar was irregular, orders were issued for cancellation of the same in G.O. Ms. No.804, Revenue, dated 03-06-1965. The said

Syed Ahmed Nooruddin (1st respondent herein) filed

W.P. No.1520 of 1970, which was allowed by a learned single Judge of this Court on the short ground that no notice was issued to the assignee before cancellation of the assignment. Thereafter, notice was issued to the assignee and after hearing the assignee, the assignment was cancelled vide

G.O. Ms. No.2166, Revenue Department, dated 23-10-1976. Aggrieved by the same, the 1st respondent filed W.P. No.3626 of 1976 and the said writ petition was also allowed on the same ground. The Joint Collector vide his proceedings, dated 02-11-1982, cancelled the assignment granted in favour of the 1st respondent holding that he was not eligible for grant of such assignment. The 1st respondent and

14 others filed W.P. Nos.14 of 1983 and 120 of 1982. This Court, vide its Order,

dated 21-01-1988, set aside the cancellation order of Joint Collector, however, with an observation that "it should not be understood to have adjudicated either the title of the respondent or the title of the Government". In another W.P. No.7890 of 1988 filed by

Smt. G. Suchitra Reddy, the 12th respondent herein and others, who are purchasers of the land from the 1st respondent, this Court while disposing of the writ petition observed, "that there is a serious dispute in respect of identity of the lands purchased by the society which can only be resolved by a competent civil court."

The Government had issued orders in Memo,

dated 11-09-1990, for effecting mutation of the land in favour of the 3rd respondent – Society and also to fix the boundaries of the society land after giving notice to all the affected parties. That the orders issued in the said memo were kept in abeyance vide subsequent memo, dated 14-02-1992.

The 3rd respondent – Society filed W.P. No.2963 of 1992 and the same was allowed by this Court observing that it is open to the parties to establish their claim in the appropriate proceedings. That pursuant to the said observations, the petitioner invoked the jurisdiction of the Special Court and filed L.G.C. No.187 of 1997.

That a detailed counter affidavit has been filed on behalf of the 3rd respondent. A memo was filed on behalf of the respondents 10 and 12 to 15 adopting the counter filed by the 3rd respondent. Separate counters have been filed by respondents 17, 18, 23, 24 and 25.

The 3rd respondent in its counter affidavit, *inter alia,* contended that the validity of the assignment of land in favour of the 1st respondent *viz.,* the predecessor in title of the 3rd respondent was adjudicated upon in various writ petitions ultimately culminating in to the orders passed in

W.P. No.2963 of 1992. Therefore, both on facts and in law, the application is not maintainable. Even if the facts stated in the concise statement are taken to be true,

the application filed before the Special Court is not maintainable. The contention is that the Special Courts have no jurisdiction to adjudicate the validity or otherwise of the assignment made in favour of the 1st respondent in Laoni Rules. The 1st respondent was assigned the land admeasuring Acs.28-27 guntas on payment of 16 times of land revenue in Survey No.102 of Hakimpet village and that he was put in possession in October, 1956 under a panchanama by the revenue authorities concerned.

The survey number from which the land was assigned to the 1st respondent was sub-divided into Survey Nos.102/2 and 102/3 and a patta was issued in his name. The title and the possession of the 1st respondent and respondents 2 to 15 claiming through the 1st respondent has been upheld by the Court, and therefore, the L.G.C. is liable to be dismissed in *limini*.

On the basis of the pleadings, the following issues were settled on 18-02-2000:

1. *Whether the applicant has title to the application schedule property ?*

2. *Whether the rival title set up by the respondents is true, valid and binding ?*

3. *Whether the respondents, in any event, acquired title by adverse possession ?*

4. *Whether the respondents are land grabbers within the meaning of Act XII of 1982 ?*

5. *In case of success, whether the applicant is entitled to the compensation claimed ?*

6. *To what relief ?*

On the concession of the counsel appearing on behalf of the parties, the following additional issue was settled on 01-11-2000:

"Whether the L.G.C. is maintainable on the pleas raised in para 3 of the counter ?"

That an application was filed to treat the additional issue as a preliminary issue and the same was taken up for consideration by the Special Court.

The Special Court, after an elaborate consideration and upon appreciation of the material made available by none other than the writ petitioner/applicant, came to the conclusion that the Special Court has no jurisdiction to entertain

the L.G.C. and accordingly left the remedies of the writ petitioner/applicant open for redressal of its grievance.

The learned Advocate General, appearing on behalf of the State, submitted that the assignment obtained by the

1st respondent is illegal, since it was obtained by playing fraud. The Special Court committed a serious error in presuming that the entry of the 1st respondent into the possession of the land was lawful for rejecting the application on the ground of jurisdiction. The Special Court ought not have recorded any conclusion on the question as to whether the respondents could be held to be land grabbers without testing the allegations in the light of the evidence to be adduced before it. The Special Court failed to see that the L.G.C. is filed in respect of Acs.40-29 guntas of land and the respondents are claiming only an extent of Acs.28-27 guntas of land but the Special Court ignoring this fact dismissed the whole of the L.G.C., which according to the learned Advocate General suffers from serious infirmities. It was further contended that for the limited purpose of hearing, whether the L.G.C. is maintainable or not, the averments made in the application alone ought to have been looked into and not the averments made in the counter filed by the parties.

Sri P.P. Rao, learned senior counsel, appearing on behalf of the respondents, *inter alia,* submitted that the application filed by the State of Andhra Pradesh under Section 8(1) of the Act before the Special Court did not disclose cause of action and was rightly rejected by the Special Court for want of jurisdiction, inasmuch as the averments made in the application do not disclose any act of land grabbing on the part of the respondents. It was further submitted that to constitute land grabbing within the meaning of the provisions of the Act, it must

be shown that the land has been taken unauthorisedly, unfairly, greedily, snatched forcibly, violently or unscrupulously. The question of jurisdiction is required to be decided as a preliminary issue for the reasons that if the application is not maintainable on the ground that it does not disclose the ingredients of the land grabbing, the Special Court cannot enter into the merits; any findings on the merits would be without jurisdiction.

We have given our anxious consideration to the submissions made during the course of hearing of the writ petition and meticulously gone through the impugned order passed by the Special Court as well as the material available on record.

The questions that fall for our consideration are:-

1. Whether the order of the Special Court is vitiated by any error apparent on the face of the record ?

2. Whether the order suffers from any incurable legal or jurisdictional error so as to be corrected by this Court in exercise of its *Certiorari* jurisdiction ?

Before we take up the issue as to whether the Special Court committed any error in coming to the conclusion that it has no jurisdiction to entertain the L.G.C. filed by the writ petitioner/applicant, the sequence of events as is evident from the concise statement and the material available on record are required to be noticed.

The Government of Andhra Pradesh vide its order in G.O. Ms. No. 804 dated 30-06-1965 cancelled the assignment granted by the then Tahsildar to the 1st

respondent without any notice whatsoever before cancelling the assignment of the land. The 1st respondent challenged the same in W.P No. 1520 of 1970 which was allowed by this Court vide its order dated 24-11-1970 and the impugned G.O was quashed on the ground that the impugned order has been passed in clear violation of the principles of natural justice. Thereafter, the 1st respondent was served with a show cause notice to which he submitted an explanation to the Government and the Government not being satisfied with the explanation passed orders in G.O.Ms. No. 2166 dated 23-10-1976 cancelling the assignment which was again challenged in W.P No. 3626 of 1976 and the same was allowed by this Court vide its order dated 21-12-1977 on the ground that the orders were issued by the Government without following the principles of natural justice. The orders were passed canceling the assignment of the 1st respondent on the grounds not stated in the show cause notice. However, liberty was given to the Government to proceed against the 1st respondent after giving notice and after providing an opportunity of being heard.

It is thereafter the land was sold by the 1st respondent through the GPA under the sale deed dated 07-12-1979 to the members of the 3rd respondent – Society. The writ petitioner – State of Andhra Pradesh by Memo No. 3790/V1/76-22
dated 07-06-1979 directed the revenue authorities to implement the order of the High Court made in W.P No. 3626 of 1976 dated 21-12-1977. The Tahsildar, Khairatabad ordered mutation in favour of the 1st respondent. While the matter stood thus, the 3rd respondent – Society applied for and obtained permissions under the provisions of the Urban Land (Ceiling and Regulation) Act.

It is alleged that some Members of Sri Venkateswara Cooperative House Building Society tried to encroach into the land and to prevent the same, certain writ petitions were field. Pending the writ petitions, the Joint Collector, Hyderabad passed orders cancelling the assignment in favour of the

1st respondent again. Writ Petition Nos. 14 of 1983 and 120 of 1982 were filed challenging the said order passed by the Joint Collector. Both the writ petitions were heard and disposed of on 22-01-1988 by this Court on the ground that the power of revision under Section 166-B of the Andhra Pradesh (Telangana Area) Land Revenue Act could not have been exercised by the Joint Collector, Hyderbad being subordinate to the Collector, Hyderabad. The order of the Joint Collector cancelling the assignment was accordingly quashed. In obedience of the orders passed by this Court, Memo No. 4024/Assign.III (2)/82-34 dated 11-09-1990 was issued by the Government of Andhra Pradesh directing the District Collector, Hyderabad to mutate the pattas in favour of the Members of the 3rd respondent – Society in view of the sale deeds executed by the 1st respondent in their favour. Since there was a dispute between the 3rd respondent – Society and Sri Venkateswara Cooperative House Building Society, Sy.Nos. 102/3 and 102/4/1 of Hakimpet Village were directed to be fixed by a survey. However, the Government issued orders, dated 14-02-1992, keeping the Memo issued by the Government, dated 11-09-1990, which directed the Collector to mutate the names of the Members of the

3rd respondent – Society, in abeyance. Aggrieved by the same, the 3rd respondent – Society filed W.P No.2963 of 1992 and the same was allowed by this Court vide its orders,

dated 30-04-1997, and the impugned Memo, dated

14-02-1992, was accordingly quashed. The order passed by this Court resulted in revival of the Government Memo

dated 11-09-1990 which directed the Collector, Hyderabad to mutate the names of the Members of the 3rd respondent – Society in the revenue records. The Government of Andhra Pradesh filed Special Leave to Appeal (Civil) No. 15067 of 1997 challenging the correctness of the decision of this Court in W.P No. 2963 of 1992. The same was disposed of by the Supreme Court in the following terms:

> "We have heard Shri A. Raghbir, the learned senior counsel appearing for the petitioner and we have also perused the impugned judgment of the High Court. In the impugned judgment reference has been made to the earlier order passed in
> W.P. No.7890 of 1988 wherein the Court has expressed the view that there was serious dispute in respect of identity of lands purchased by one of the societies which could only be resolved by competent Civil Court in a properly framed suit after recording evidence. We are in agreement with the said view of the High Court. In these circumstances, we are not inclined to interfere with the impugned judgment. The special leave petition is, therefore, dismissed."

The L.G.C is stated to have been filed pursuant to the observations so made by the Supreme Court while dismissing the Special Leave Petition preferred by the State.

The sequence of events which we have noticed in detail and which are stated in the concise statement of facts reveal that the assignment by way of patta granted to the 1st respondent continues to be in operation. It is nobody's case that the 1st respondent entered into the land forcibly or illegally. His possession is referable to the patta that was granted by the Tahsildar. That so far no competent authority declared the assignment granted in favour of the
1st respondent herein to be illegal or void and all such attempts made ended in favour of the 1st respondent as the proceedings making an attempt to cancel

the patta were quashed by this Court.

The question that falls for our consideration is whether the respondents are land grabbers within the meaning of the Act and whether the L.G.C is maintainable even if all the allegations and averments made in the concise statement are taken to be true?

Section 2(d) of the Act defines the "land grabber" as follows:

> *"land grabber"* means a person or a group of persons who commits land grabbing and includes any person who gives financial aid to any person for taking illegal possession of lands or for construction of unauthorized structures thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation, or who abets the doing of any of the above mentioned acts; and also includes the successors in interest".

Section 2(e) defines the expression "land grabbing" which reads as under:

> "*land grabbing"* means every activity of grabbing or any land (whether belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person) by a person or group of persons, without any lawful entitlement and with a view to illegally taking possession of such lands, or enter into or create illegal tenancies or lease and licences agreements or any other illegal agreements in respect of such lands, or to construct unauthorized structures thereon for sale or hire, or give such lands to any person on rental or lease and licence basis for construction, or use and occupation, of unauthorized structures; and the term "to grab land" shall be construed accordingly".

In ***KONDA LAKSHMANA BAPUJI v. GOVT. OF A.P***, the Supreme Court held thus:

> "The various meanings noted above, disclose that the term "grab" has a broad meaning – to take unauthorisedly, greedily or unfairly – and a narrow meaning of snatching forcibly or violently or by unscrupulous means. Having regard to the object of the Act and the various provisions employing the term we are of the view that the term "grab" is used in the Act in both its narrow as well as broad meanings. Thus understood, the ingredients of the expression "land grabbing" would comprise (i) the factum of an activity of taking possession of any land forcibly, violently, unscrupulously, unfairly or greedily without any lawful entitlement, and (ii) the mens rea/intention – "with the intention of/ with a view to" (a) illegally taking possession of such lands, or (b) enter into or create illegal tenancies, lease and licence agreements or any other illegal agreements in respect of such lands, or (c) to construct unauthorized structures thereon for sale or hire, or (d) to give such lands to any person on (i) rental, or (ii) lease and licence basis for construction, or (iii) use and occupation of unauthorized structures.
>
> A combined reading of clauses (d) and (e) would suggest that to bring a person within the meaning of the expression "land grabber" it must be shown that: (i)(a) he has taken unauthorisedly, unfairly, greedily, snatched forcibly, violently or unscrupulously any land belonging to the Government or a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person; (b) without any lawful entitlement; and (c) with a view to illegally taking possession of such lands, or enter or create illegal tenancies or lease and licence agreements or any other illegal agreements in respect of such lands or to construct unauthorized structures thereon for sale or hire, or give such lands to any person on rental or lease and licence basis for construction, or use and occupation of unauthorized structures; or (ii) he has given financial aid to any person for taking illegal possession of lands or for construction of unauthorized structures thereon; or (iii) he is collecting or attempting to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation; or (iv) he is abetting the doing of any of the abovementioned acts; or (v) that he is the successor-in-interest of any such persons."

That for the purpose of taking cognizance of a case under the Act, existence of an allegation of any act is a

sine qua non and not the truth or otherwise of such an allegation. But the allegations levelled must satisfy the ingredients of 'land grabbing' as defined under Section 2(e) of the Act. To make out a case in a civil case that a person is a land grabber one must aver and prove both the ingredients – factum as well as intention.

In ***Gouni Satya Reddi v. Government of A.P. & Others,*** the Supreme Court held "that grabbing of any land must be without any lawful entitlement and with a view to take possession of such lands illegally. That is to say, the land grabber must be aware of the fact that he is entering into the possession illegally and without any lawful entitlement" . If such elements as indicated above are missing, it would not be a case of land grabbing.

I n ***PITHANA NANDA KUMAR AND OTHERS v. KOSTU ESWARA RAO***, a Division Bench of this Court took the view that in order to decide as to who is a land grabber what is relevant is to see the status of person at the time of initial entry into the land. "If a person enters into the land with the intention of grabbing it, which belongs to others, then he has to be styled as 'land grabber'". That if the initial entry into the land was legal, the subsequent events cannot make one as the land grabber.

A Full Bench of this Court in W.P No. 16633 of 2004 and Batch dated 11-03-2005, held that taking possession of the land without any lawful entitlement thereto is the sine qua non to hold a person to be a land grabber. Unless a person unauthorisedly and without any lawful entitlement thereto enters or

intrudes into the land forcibly or otherwise, he cannot be held to be a land grabber. The emphasis is on taking possession without any lawful entitlement. The land grabber must be aware of the fact that he is entering into possession illegally and without any lawful entitlement; if such elements are missing, it would not be a case of land grabbing.

The Special Court having scrutinized the averments and allegations made in the concise statement in the L.G.C held that neither the 1st respondent nor the purchasers under the 1st respondent viz., the Members of the 3rd respondent - Society or the Members of the 4th respondent – Association can be termed as land grabbers. The Special Court found that the initial entry into the possession of the land is lawful viz., it is referable to the assignments granted by the State itself. The Special Court further held that it has no jurisdiction to decide the validity or otherwise of the assignment. The Special Court, no doubt, has jurisdiction to decide the ownership, title and lawful possession, but only in respect of land grabbed and not in respect of any and every land. This view of the Special Court is in conformity with the view taken by the Full Bench of this Court in W.P No. 16633 of 2004 and Batch referred to hereinabove. In the concise statement, there is not even an allegation that the 1st respondent or the purchasers under him grabbed the land. The whole of the case in the L.G.C is based upon the observations made by this Court in W.P No. 2963 of 1992 to the effect, “hence, we do not propose to direct the parties once again to agitate their rights before the Government. It is open for them to establish their claim before an appropriate proceedings”. Based on the said observations, the writ petitioner – State filed the L.G.C seeking declaration of title and possession. The L.G.C proceeds on the assumption as if the Special Court has jurisdiction to grant the relief of declaration of title and possession of

the land. It is needless to restate that the Special Court is not a substitute for the ordinary civil Courts to entertain and resolve the disputes of title and possession. The Special Court can go into questions of title and possession like an ordinary civil Court in respect of the land grabbed. It has no jurisdiction to entertain any simple case seeking declaration of title and possession in the absence of allegations of land grabbing. The Special Court, no doubt, exercises all the powers of civil Court for the purposes of even deciding the question of title of the land but only of the land alleged to have been grabbed.

The application filed by the State of Andhra Pradesh under Section 8(1) of the Act before the Special Court did not disclose cause of action and the Special Court rejected the application for want of jurisdiction inasmuch as the averments made in the application do not disclose any act of land grabbing on the part of the respondents. The contention put forth by the State was that all the issues including the issue relating to the jurisdiction of the Court ought to have been taken up for consideration after enquiry and trial is completed. We shall examine the contention.

I n ***BHAGWATI PD. DIXIT v. RAJEEV GANDHI***, the Supreme Court upheld the decision of the High Court in dismissing the election petition on the ground that the averments in the election petition, taken at their face value, did not disclose any cause of action for setting aside the election of the returned candidate on the grounds stated in Section 18(1)(a) of the Presidential and Vice-Presidential Elections Act, 1952. The dismissal of the election petition on the said ground at a preliminary stage was upheld.

I n ***DHARTIPAKAR MADAN LAL AGARWAL v. RAJIV GANDHI***, the

Supreme Court in detail examined the question whether the High Court had jurisdiction to strike out pleadings under Order VI Rule 16 of the Code of Civil Procedure and to reject the election petition under Order VII Rule 11 of the Code at the preliminary stage even though no written statement had been filed by the respondent. That on a combined reading of Sections 81, 83, 86 and 87 of the Representation of the People Act, 1951, the Court held that a petition which does not disclose any cause of action, is liable to be struck off under Order VI Rule 16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit.

In ***SAMAR SINGH v. KEDAR NATH***, the Supreme Court held that if an election petition can be summarily rejected at the threshold of the proceedings there is no reason as to why the same cannot be rejected at any stage of subsequent proceeding. “If after framing of issues basic defect in the election petition persists (absence of cause of action) it is always open to the contesting respondent to insist that the petition be rejected, under Order 7 Rule 11 and the Court would be acting within its jurisdiction, in considering the objection. Order 7 Rule 11 does not place any restriction or limitation on the exercise of court’s power; it does not either expressly or by necessary implication provide that power under Order 7 Rule 11 CPC should be exercised at a particular stage only. In the absence of any restriction placed by the statutory provision, it is open to the court to exercise that power at any stage. While it is true that ordinarily preliminary objection to the maintainability of the petition on the ground of absence of cause of action should be raised by the

respondent as early as possible but if a party raises objections after filing written statement the preliminary objection cannot be ignored. If the election petition does not disclose any cause of action, the respondent's right to raise objection to the maintainability of the petition, or the court's power to consider the objection is not affected adversely merely because the objection is raised after filing of written statement or framing of issues. The court would be acting within its jurisdiction in exercise of its power under Order 7 Rule 11 in rejecting the same even after settlement of issues".

In ***KUSUM INGOTS & ALLOYS LTD. v. UNION OF INDIA***, the Supreme Court explained as to what is the cause of action. It is held thus:

> "Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitute the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily".

In ***ABDUL RAHMAN v. PRASONY BAI***, the Supreme Court observed:

> "For the purpose of disposal of the suit on the admitted facts, particularly when the suit can be disposed of on preliminary issues, no particular procedure was required to be followed by the High Court. In terms of Order 14 Rule 1 of the Code of Civil Procedure, a civil court can dispose of a suit on preliminary issues. It is neither in doubt nor in dispute that the issues of res judicata and/or constructive res judicata as also the maintainability of the suit can be adjudicated upon as preliminary issues. Such issues, in fact, when facts are admitted, ordinarily should be decided as preliminary issues".

A Full Bench of this Court in the judgment referred to supra held that the Special Court is entitled to exercise the power under Order – VII, Rule 11 of the Code of Civil Procedure, and reject the application, if the allegations made therein do not disclose cause of action and the case is frivolous and vexatious one. It is held:

> "That an application, filed under Section 8 of the Act, which does not disclose cause of action would be a frivolous petition and liable to be rejected without any further enquiry."

In the instant case, the Special Court having scanned through the allegations made in the L.G.C found the initial entry into possession of the land is referable to the assignments granted by the State in favour of the 1st respondent; the possession was handed over by the State on assignment to the first respondent, who, in turn, handed over possession to the purchasers. In such a situation, the State cannot claim that either the 1st respondent or the purchasers from him are the land grabbers.

The Special Court accordingly answered the additional issue in favour of the respondents, which goes to the root of the matter and relates to the jurisdiction of the Court. We do not find any error to have been committed by the Special Court in dismissing the L.G.C filed by the writ petitioner – State of Andhra Pradesh.

However, the remedies, if any, available to the petitioner – State of Andhra Pradesh are left open since the case has been disposed of on the

ground of jurisdiction and not on merits.

The Writ Petition fails and shall accordingly stand dismissed. No order as to costs.

(B. Sudershan Reddy, J)

-04-2005

(K.C. Bhanu, J)

KS/PV

To

1. The Revenue Divisional Officer, Hyderabad, the State of Andhra Pradesh.
2. Two CCs to the Advocate General, High Court of Andhra Pradesh, Hyderabad (OUT).
3. 2 CD copies.
4. 1 CC to MR.MAHENDER REDDY.
5. 1 CC to SMT.CHINTALAPUDI LAKSHMI KUMARI.
6. 1 CC to MR.SRI RAGHU RAM.